

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**CIVIL NO. 3:02CV66
(3:97CR22-9)**

IVEY WALKER,)
Petitioner,)
Vs.) ORDER
UNITED STATES OF AMERICA,)
Respondent.)

THIS MATTER is before the Court on the Petitioner's motion for the issuance of a subpoena at Government expense. The motion, which was filed two business days before the hearing scheduled for Monday, February 27, 2006, at 10:00 a.m., is denied.

By Memorandum and Order filed December 21, 2005, Petitioner was placed on notice that an evidentiary hearing had been scheduled on his claim of ineffective assistance. Counsel for the Petitioner was appointed on January 4, 2006. The delay in seeking a subpoena is neither explained nor excusable. Although counsel cites "logistical problems," the same are not described. Counsel also claims the case is complex; however, the

Court's decision discretely and narrowly defined the issues. Moreover, Ms. Shappert's comments, which were quoted in the decision, are a matter of public record. Counsel claims that "the record is devoid of any action which the Government or Ms. Shappert undertook at trial to determine if the conflict was resolved[.]" It was not the duty of the Government or Ms. Shappert to resolve a conflict of interest. The issue is not whether Ms. Shappert had a conflict of interest but rather whether trial counsel had such a conflict.

IT IS, THEREFORE, ORDERED that the motion for issuance of a subpoena is hereby **DENIED**.

Signed: February 24, 2006



Lacy H. Thornburg
United States District Judge

